

Mandates of the Independent Expert on the situation of human rights in Somalia and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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(Please use this reference in your reply)

19 August 2024

Excellency,

We have the honour to address you in our capacities as Independent Expert on the situation of human rights in Somalia and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 54/32 and 52/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning provisions of the proposed "Official Information Bill" that is currently under consideration by the Federal Parliament of Somalia. We appeal to your Excellency's Government to ensure that the current Bill is fully in line with international human rights standards and succeeds in effectively providing all Somali citizens access to information held by public institutions, without overbroad provisions hindering the objective of the Law.

Applicable international human rights law standards

The right of access to information is a central component of the right to freedom of expression and is a cornerstone of democratic society. This right, enshrined in article 19 of both the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights (ICCPR), encompasses both the general right of the public to have access to information of public interest from a variety of sources, and the right of the media to access information.

The United Nations Human Rights Committee, in its authoritative interpretation of article 19 [general comment No. 34](#) stated that "to give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests".

The Special Rapporteur on freedom of opinion and expression has noted that "the overarching notion is that all information in the possession of the State belongs to the public, with limited and qualified exceptions that must be justified by State authorities" and that any restriction to the right to information must be enshrined in law, be concrete, clear and unambiguous, and compatible with the State's international human rights obligations and must also strictly conform to tests of necessity and proportionality (A/68/362, paras. 50-51). Further, the Special

Rapporteur has indicated that “when invoking a legitimate ground for restriction of freedom of expression, the authorities must demonstrate, in specific and individualized fashion, the precise nature of the imminent threat, as well as the necessity for and the proportionality of the specific action taken. A direct and immediate connection between the expression (or the information to be disclosed) and the alleged threat must be established”. Moreover, “there must be recourse to a review of a refusal to provide information in national legislation, including prompt, comprehensive and efficient judicial review of the validity of the restriction by an independent court or tribunal” (A/68/362, paras. 53-54).

Additionally, article 1 of the African Charter on Human and Peoples’ Rights (the African Charter) obliges States Parties to “adopt legislative, or other measures to give effect to the rights, duties and freedoms enshrined therein.” Accordingly, Governments are required to adopt laws which guarantee the right of every individual ‘to receive information’ as provided in article 9(1) of the African Charter.

Furthermore, the “Model Law on Access to Information for Africa” adopted by the African Commission on Human and Peoples’ Rights in 2013 provides a template to African States in the formulation, adoption, or alternatively review, of access to information legislation and to ensure effective implementation of the laws.

Compatibility of the “Official Information Bill” with international human rights standards

On the occasion of the submission of the “Official Information Bill” to the Federal Parliament, we note that it represents a significant piece of legislation to ensure the promotion and protection of the right to access information, enshrined in the Provisional Constitution of the Federal Republic of Somalia and in international law. In this regard, we wish to commend efforts by the Federal Government of Somalia aimed at enhancing transparency and guaranteeing the right for all Somalis to access information held by public institutions, which is essential for promoting accountability, public participation, and fostering trust between the Government and its citizens. We also welcome the roles and obligations assigned to the Ministry of Information in the implementation of the provisions of the Law under article 35.

However, according to the information received, some provisions of the Bill are at odds with the Federal Republic of Somalia’s international human rights obligations, in particular as set out in the International Covenant on Civil and Political Rights and the African Charter.

First, we would like to refer to some definitions included in the law that may be unclear and/or overbroad. In this regard, we wish to note that the definition of “national security” contained in article 3(7) is notably overbroad, thus risking impeding the objective of this Bill, which is facilitating access to information as contemplated under article 32 of the Provisional Constitution. We encourage to make sure this definition is in line with the relevant international standards.

Additionally, the reference to “public interest organizations” under article 4.1. of the Bill may be misleading, as this term generally encompasses a wide range of entities, including some private and civil society organizations engaged in ‘public interest’ roles such as humanitarian response, policy advocacy, and campaigning. The “Model Law on Access to Information for Africa” applies broadly to all public and

private bodies that perform public functions or receive public funds, without excluding private profit-seeking entities. Moreover, the African Charter on Human and Peoples' Rights guarantees access to information held by a private body that may assist in the exercise or protection of any right. Expanding the scope of the Bill to include all private entities performing public functions or receiving public funds, would enhance transparency and accountability in private entities that significantly impact public interests.

On a further note, article 9 (1) provides that any citizen or legally residing individual in the country who has reached the age established by law for exercising civil rights can request stored information. The age requirement for the request of information does not align with international standards as children are equally entitled to rights including right to access information.

Article 11 of the Bill allows institutions to deny requests and requires applicants to appeal to the competent court. The Bill's reliance on court appeals may deter applicants due to the time, cost and complexity of judicial proceedings whereas international human rights instruments promote an individual right to appeal to an independent administrative body in case of rejections.

Moreover, article 12 lists several grounds allowing for the denial of a request for stored information, including if it "relates to administrative measures being taken by the institution", affects "ongoing or anticipated" legal proceedings, breaches personal data protection or obstructs or interferes with a criminal investigation. These grounds of denial of information are overbroad and may render inaccessible several categories of information that may belong to the public interest sphere, defeating the purpose of the Bill. Reasons for the denial of access to information should be clearly and narrowly designed, bearing in mind the principles of legality, necessity and proportionality.

Finally, allow us to kindly remind you that civil society organizations are major stakeholders in the promotion and protection of human rights and can bring valuable insights and give legitimacy to Governments' initiatives. Experience from around the world shows that human rights matters cannot be resolved without effective dialogue and collaboration between civil society and the authorities. In this regard we hope that relevant stakeholders will be provided the space for engaging and being consulted in the development and consideration of this Bill, going forward. Failure to do so would undermine the democratic process and risks the adoption of a law that lacks inputs from essential groups and fails to address the concerns of Somali people.

Without prejudging the accuracy of this information, we wish to express our concern that provisions of the Bill could undermine its effectiveness and fall short of the relevant international standards, including the African Union Model Law on Access to Information.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide information on the current state of consideration of the draft "Official Information Bill" by your Excellency's Government.

2. Please provide any additional information and/or comment(s) you may have on the above-mentioned observations regarding the “Official Information Bill”.
3. Please explain how the “Official Information Bill” and particularly the analysed provisions contained in articles 3(7), 4(1), 9(1), 11 and 12 are compatible with your Excellency’s Government’s international human rights obligations under ICCPR and the African Charter.
4. Please, explain, what measures have been taken or are planned to be taken by your Excellency’s Government to engage in a thorough public consultation process, allowing for substantive input from all segments of the society and to build consensus regarding the Bill.
5. Please indicate which measures are being taken by your Excellency’s Government in order to review the “Official Information Bill” in light of the above-mentioned observations and in order to make sure it is fully in line with international human rights standards, including on the right to information.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We encourage your Excellency’s Government to review and reconsider the Official Information Bill to ensure that the law is in full compliance with the Federal Republic of Somalia’s international human rights obligations. We stand ready to engage in dialogue with Your Excellency’s Government on this very important matter.

Please accept, Excellency, the assurances of our highest consideration.

Isha Dyfan

Independent Expert on the situation of human rights in Somalia

Irene Khan

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